

# P-1 CONTINUING EDUCATION

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Chapter 9  
Employee  
Vs.  
Contractor

# Employee or Independent Contactor?

1. What is worker/employee misclassification?
2. Are there any guidelines to help employers classify workers correctly?
3. What is the “ABC Test”?
4. What are “Common Law Rules”?
5. Why should misclassification matter to workers, employers, taxpayers and the government?

# What is worker/employee misclassification?

- When a contractor incorrectly identifies a worker as an independent or sub contractor instead of an employee.
- Sometimes misclassification happens accidentally.
- More often it occurs when a contact tries to circumvent the law to avoid paying taxes and insurances.

# Are there any guidelines to help employers classify workers correctly?

- Different state agencies use different standards for classification.
- The Connecticut Department of Revenue Services refers to “Common Law Rules”.
- The Connecticut Department of Labor uses the ABC test.
- The Worker’s Compensation Commission considers other factor for their deamination.
- The employer should become familiar will all these rules to avoid and fines and or penalties that could be levied because of misclassification.

# What is the ABC test?

- The ABC test applies three factors for determining a worker's employment status.
- An individual **MUST** meet all three of the following factors to be considered an independent contractor.
  - A. The individual must be free from direction and control in connection with performance of the service, both under his or her contract of hire and in fact
  - B. The individual's service must be performed either outside the usual course of business of the employer or outside all the employer's places of business; and
  - C. The individual must be customarily engaged in an independently established trade, occupation, profession or business of the same nature as the service performed.

# What is the ABC test?

- Factor A incorporates many of the common law factors listed in the next set of slides.
- Likewise, individuals who may form a business to respond to an offer of work as an independent contractor will not meet the “customarily engaged” or the “independently established” criteria of test “C”.

# What are “Common Law Rules”?

Three major factors should be considered when determining the correct classification of a worker

1. Behavioral Control.
2. Financial Control.
3. Relationship of the Parties.

# Behavioral Control

**The right to direct and control the details and means by which the worker performs the required service.**

- *When to do the work.*
- *Where to do the work.*
- *What tools or equipment to use.*
- *What workers to hire to assist with the work.*
- *Where to purchase supplies and services.*
- *What work must be performed by a specific individual, including the ability to hire assistants.*
- *What routines or patterns must be used?*
- *What order or sequence to follow.*



# Financial Control

**Economic aspects of the relationship between the parties are analyzed in determining worker classification. Factors that demonstrate financial control include:**

- *Does the worker have a significant investment in facilities and equipment?*
- *Are the worker's business expenses reimbursed?*
- *Does the worker make the services available to the relevant market?*
- *How is the worker paid?*
- *Does the worker have an opportunity for profit or loss?*

# Relationship of the Parties

**Is important because it shows the parties intent concerning control. The factors are...**

- *Intend of parties. Is there a written contract?*
- *Tax Forms. Does worker receive a W-2 or 1099-MISC?*
- *Incorporation. Is the worker providing services as a recognized corporate entity?*
- *Employee benefits. Does the worker receive employee benefits traditionally associated with employee status?*
- *Discharge/Termination. What are the circumstances under which a worker can terminate their relationship.*
- *Long-term relationship.*
- *Regular business activity. Are the services provided by the worker a key aspect of the regular business of the company?*

**Relevant evidence in all three categories must be weighed to determine the worker's status.**

# Why should misclassification matter to workers, employers, taxpayers and the government?

The next slides will address how misclassification of workers affects not only the worker but the employer and Connecticut's taxpayers and the government.

# The Worker

**Workers that are misclassified as independent contractors can experience a loss of certain employment protections and benefits. These may include...**

- *Ineligibility for unemployment compensation.*
- *No worker's compensation coverage if hurt on the job.*
- *No overtime pay, minimum wage earnings or below, and often a job without health benefits.*
- *Incorrect payment of various state and federal employment taxes such as social security, federal and state unemployment and income tax that could result in a worker's liability to pay applicable taxes with interest and penalties if not reported properly.*

# The Employer

## **Employers who illegally misclassify workers:**

- *Create an unfair business climate where law-abiding employers cannot compete against employers who intentionally undercut them by not paying all taxes and benefits for workers.*
- *Do not pay lawful, employment related taxes on workers- resulting in higher taxes for other employers who follow the law.*
- *Could be liable for back assessments and substantial penalties.*

# Taxpayers and the Government

- *Taxpayers pay more than their share when legally irresponsible employers avoid paying them.*
- *Government loses much needed tax revenue.*
- *Government paid entitlement programs for benefits that could be provided by an employer-provided by taxpayers for benefits even though no cost was incurred by businesses.*

# Self employed

Employers are not the only ones who may misclassify independent contractors. Individuals will sometimes call themselves a subcontractor to avoid business costs of taxes and workmen's compensation insurance. The same rules apply requiring that all three parts of the ABC test be met. On the next slides are two different scenarios, but the same rules apply.

# Scenario #1

If you decide to go to work for a company as a subcontractor, you cannot be directed in any way by that company's foreman for your daily activities. You must have a contract, workmen's compensation insurance with payroll associated with that policy, be responsible for your own hours, tools, equipment and manpower necessary to meet the scheduled completion date.

If you are directed or managed in any way you do not qualify as an independent contractor and you could face fines as outlined in the Public Act No. 10-12



## Scenario #2

If you decide to open your own business and would rather just hire subcontractors to save money until you get your business up and running, you need to make sure you do it in accordance with the ABC test or you will end up spending way more than you saved if any or all of the fines mentioned are assessed to you.